Federal Court Cour fédérale

Date: 20200122

Docket: IMM-6003-18

Citation: 2020 FC 88

Ottawa, Ontario, January 22, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

FATIMA QURESHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Pakistan. She was born there in 1943. She lived in the United States from 1998 until 2009 but she has lived in Canada since February 2009.

[2] The applicant made a claim for refugee protection in Canada in August 2009 but it was rejected in March 2012 because she was excluded from refugee protection under Article 1E of the Refugee Convention. Her applications for permanent residence in Canada on humanitarian

and compassionate [H&C] grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and for a pre-removal risk assessment under section 112 of that Act were refused in March 2014.

[3] In August 2017, the applicant applied again for permanent residence from within Canada on H&C grounds. In a decision dated November 16, 2018, a Senior Immigration Officer refused the application. The applicant now applies for judicial review of this decision under section 72(1) of the *IRPA*. She contends that the decision is unreasonable because the officer assessed the application on the erroneous basis that she was a permanent resident of the United States.

[4] As I explain in the reasons that follow, I do not agree. The application for judicial review will therefore be dismissed.

[5] It is well-established that the substance of the officer's decision should be reviewed on a reasonableness standard: see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 at para 44 [*Kanthasamy*]; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 18 [*Kisana*]; and *Taylor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 21 at para 16.

[6] That this is the appropriate standard has recently been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the majority of the Court set out a revised framework for determining the standard of review with respect to the merits of an

administrative decision (at para 10). Applying *Vavilov*, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review of the officer's decision.

[7] The majority in *Vavilov* also sought to clarify the proper application of the reasonableness standard (at para 143). The principles the majority emphasizes were drawn in large measure from prior jurisprudence, particularly *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*]. Although the present application was argued prior to the release of *Vavilov*, the footing upon which the parties advanced their respective positions concerning the reasonableness of the officer's decision is consistent with the *Vavilov* framework. I have applied that framework in coming to the conclusion that the officer's decision is reasonable; however, the result would have been the same under the *Dunsmuir* framework.

[8] As discussed in *Vavilov*, the exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (*Vavilov* at para 95). For this reason, an administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Here, the onus is on the applicant to demonstrate that the officer's decision is unreasonable. Before the decision can be set aside on this basis, I must be satisfied that "there are sufficiently serious shortcomings

in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[9] Section 25(1) of the *IRPA* authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the Act. Relief of this nature will only be granted if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national." These considerations include matters such as children's rights, needs and best interests; maintaining connections between family members; and averting the hardship a person would suffer on being sent to a place where he or she has no connections (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 at para 41). The fundamental question is whether, in a given case, an exception ought to be made to the usual operation of the law (see *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 16-22). This discretion to make an exception provides flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19).

[10] There will inevitably be some hardship associated with being required to leave Canada and "[t]his alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1)" (*Kanthasamy* at para 23). What does warrant relief will vary depending on the facts and context of the case (*Kanthasamy* at para 25). H&C relief is an exceptional and highly discretionary measure (*Canada (Minister of Citizenship and Immigration)*

v Legault, 2002 FCA 125 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4). The onus is on an applicant to present sufficient evidence to warrant the exercise of such discretion in his or her case (*Kisana* at para 45; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Ahmad v Canada (Citizenship and Immigration)*, 2008 FC 646 at para 31; *Zlotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 22).

[11] In the present case, the officer made the following determinations in refusing the application for H&C relief:

- The applicant has not achieved significant integration into her local community or the wider Canadian society.

- The applicant is a permanent resident of the United States and "has presented little to no evidence to demonstrate that she would be unable to return to the US."

- Three of the applicant's adult children live in Canada but "the applicant has a history of travelling between the US, her country of permanent residence, and Canada to visit her children here." Should she leave Canada for the United States, the applicant would be able to continue to visit her children in Canada, just as she did prior to February 2009. They could also keep in contact in other ways. As well, "on return to the US the applicant will be reunited with her eldest son . . . who currently resides in that country."

- While the applicant has few if any ties to Pakistan, she could return to the US.

- The applicant has "presented minimal evidence to demonstrate that the healthcare system in the US would be unable to meet the applicant's needs and provide the necessary treatment, should the need for treatment arise in the future."

[12] Weighing all of these considerations and the evidence provided, the officer was not satisfied that the circumstances of the applicant's case warranted making an exception under section 25(1) of the *IRPA* from the usual requirements of the law.

[13] It is apparent that the applicant's status in the United States was a significant consideration for the officer. The applicant submits that it was unreasonable for the officer to decide the application on the basis that she is a permanent resident there. I do not agree.

[14] The applicant stated in her application that she had lived in the United States as a permanent resident from 1998 to February 2009. She also noted on her application that her application for refugee protection in Canada had been refused because she held a Green Card in the United States. The officer can hardly be faulted for relying on information the applicant herself had provided.

[15] If, as the applicant now submits, she may have lost her permanent resident status in the United States in the interim, evidence to this effect should have been put before the officer as part of the application for H&C relief. Such evidence cannot now be relied upon in this application for judicial review to impugn the officer's decision (cf. *Association of Universities*

and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 17-20 and *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28).

[16] Having regard to the evidence and information before the officer, the decision is altogether reasonable.

[17] It goes without saying that it is always open to the applicant to submit another application for H&C relief, this time supported by current information about her status (or lack thereof) in the United States.

[18] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

<u>JUDGMENT IN IMM-6003-18</u>

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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